



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials
Safety Administration**

DEPT. OF TRANSPORTATION
DOCKETS

2005 MAR -7 A 10:47

Office of the
Chief Counsel

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***Hazardous Materials Safety
Law Division***

NOTICE OF PROBABLE VIOLATION

PHMSA Case No. 05-0092-SD-SW **Date Issued:** MAR 11 2005

Respondent: Wilkens Paints (Hellas) S.A.
12 Skouze Street 185 35
Piraeus Greece, XX 99999
ATTN: Mr. John Staphopoulos, General Manager

No. of Alleged Violations: 3

Maximum Possible Assessment: \$97,500

Total Proposed Assessment: \$16,500

The Office of the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) alleges that you (the Respondent named above) violated certain provisions of the Federal Hazardous Materials Transportation Law, 49 U.S.C. § 5101 *et seq.*, and/or the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171 - 180. PHMSA sets forth the specific allegations in Addendum A to this Notice.

What is the maximum and minimum civil penalty that PHMSA can assess? Federal law sets a civil penalty of not more than \$32,500 and a civil penalty of not less than \$275 for each violation of the Federal Hazardous Materials Transportation Law or the HMR committed after October 1, 2003, and no more than \$27,500 and no less than \$250 for each violation occurring before October 1, 2003 but after January 21, 1997 (49 C.F.R. §107.329(a)). Each day of a continuing violation constitutes a separate violation for which the maximum penalty may be imposed (49 U.S.C. § 5123(a)(2)).

What factors does PHMSA consider when proposing and assessing a civil penalty? Federal law requires PHMSA to consider certain factors when proposing and assessing a civil penalty for a violation of Federal Hazardous Materials Transportation Law or the HMR. Please refer to Addendum B to this Notice for more information concerning these factors.

When is my response due? You must respond within thirty (30) days from the date that you receive the Notice (49 C.F.R. § 107.313(a)). PHMSA encourages you to submit your response by e-mail or fax when possible. PHMSA may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period (49 C.F.R. §107.313(c)). Please contact the undersigned attorney if you have any questions.

What are my response options? You may respond to this Notice in any of three ways:

- (1) Admit the alleged violations and pay the proposed assessment (49 C.F.R. § 107.313(a)(1));
- (2) Send an informal response, which can include a request for an informal conference (49 C.F.R. § 107.313(a)(2)); or
- (3) Request a formal hearing (49 C.F.R. § 107.313(a)(3)).

PHMSA provides information on these options in Addendum B to this Notice and the Office of the Chief Counsel's homepage (<http://rspa-atty.dot.gov>). PHMSA explains its procedures for assessing civil penalties and imposing compliance orders in 49 C.F.R. § 107.307 through 107.331.

What happens if I fail to respond? You waive your right to contest the allegations made in Addendum A to this Notice if you fail to respond within thirty (30) days of receiving it (or by the end of any extension). Also, the Chief Counsel may make a finding of fact consistent with the allegations in this Notice and assess an appropriate civil penalty if you fail to respond within the applicable time frame.



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Enclosures: Addendum A
Addendum B
Addendum C
Case Exhibits

REGISTERED MAIL - RETURN RECEIPT REQUESTED

PHMSA Case No. 05-0092-SD-SW

SPECIFIC ALLEGATIONS

Probable Violation No. - 1

Respondent offered a hazardous material for transportation in a packaging that had not been subjected to design qualification testing and that was not certified to a United Nations (UN) standard, in violation of 49 C.F.R. §§ 171.2(a) and (c), 173.22(a)(2), 173.24(c), 173.202(c) and 173.203(c) and IMDG Code Volume I, Ch 4.1, sections 4.1.3.1 and 4.1.4.1..

Factual Allegations/Averments

A. On January 28, 2003, Respondent offered a hazardous material ("Toxic Liquid, flammable, organic, n.o.s., 6.1, UN 2929, PG II") for transportation in commerce.

B. Respondent shipped this hazardous material from Greece into the United States.

C. Respondent packaged the hazardous material in 20-liter polymer drums.

D. These drums had not been subjected to design testing.

E. These drums were not marked and certified as meeting a United Nations performance Standard.

- Please see Inspection/Investigation Report Number 05455002 at pages 2 and 3, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. - 2

Respondent offered a hazardous material for transportation in commerce, when Respondent used packagings that did not contain a hazardous material label, in violation of 49 C.F.R. §§ 171.2(a), and 172.400(a) and IMDG Code Volume I, Chapter 5.2, Section 5.2.2.1.1.

Factual Allegations/Averments

A. On January 28, 2003, Respondent offered a hazardous material (Paint, 3, UN 1263, PG II) in 20-liter drums.

B. These 20-liter drums containing the hazardous material did not have hazard labels affixed thereto.

Probable Violation No. 2 - Continued

- Please see Inspection/Investigation Report Number 05455002 at pages 4 and 5, and the exhibits that accompany this report, which are incorporated herein.

Probable Violation No. 3

Respondent offered a hazardous material for transportation when Respondent used a packaging that was not marked with the proper shipping name and UN-identification number, in violation of 49 C.F.R. §§ 171.2(a), 172.300(a), and 172.301(a) and IMDG Code Volume 2, Chapter 3.1 Section 3.1.2., and Chapter 3.2, Section 3.2.1..

Factual Allegations/Averments

A. On January 28, 2003, Respondent offered a hazardous material (Paint, 3, UN 1263, PG II) for transportation in commerce.

B. Respondent offered the hazardous materials in packagings that were not marked with the proper shipping name or UN-identification number.

- Please see Inspection/Investigation Report Number 05455002 at pages 6 and 7, and the exhibits that accompany this report, which are incorporated herein.

**FACTS ALREADY CONSIDERED (UNDER 49 C.F.R. § 107.331) IN SETTING
PROPOSED PENALTIES**

Prior Violations of the Hazardous Materials Regulations:

As 49 C.F.R. § 107.331(d) provides, PHMSA increases proposed penalties when Respondent has committed a prior violation of the Federal Hazardous Materials Transportation Law or the HMR within the last six years, as determined through a civil penalty case, criminal case, or ticketing process. More specifically, "the general standards for increasing a baseline proposed penalty on the basis of prior violations are . . . (1) for each prior civil or criminal enforcement case—25% increase over pre-mitigation recommended penalty, and (2) for each prior ticket—10% increase over pre-mitigation recommended penalty" (49 C.F.R. Part 107, Subpart D, Appendix A, Section IV, E).

PHMSA's records do not contain any prior violations by Respondent, and no prior violations have been considered in determining the proposed assessment for the violation in this Notice.

Corrective Action:

An important purpose of PHMSA's enforcement program is to bring the regulated community into compliance with the Hazardous Materials Regulations, and to promote ongoing efforts by that community to maintain compliance. PHMSA considers documented evidence of action(s) taken by a Respondent to correct violations and ensure that they do not recur in determining the final penalty assessment (49 C.F.R. § 107.331 (g)).

As of this date, Respondent has not provided PHMSA with any documentation of corrective action. Respondent is encouraged to provide information and documentation of the steps it has taken to correct the violations alleged below and to prevent future violations of the HMR.

Financial Status

Under 49 C.F.R. §107.331 (e) and (f), the proposed penalty may be reduced if Respondent demonstrates that it is unable to pay that penalty, or if payment of the proposed penalty would affect Respondent's ability to continue in business. Respondent's poor financial condition may be a basis for reducing the proposed penalty; a healthy financial condition is *not* a basis for increasing the penalty.

PHMSA has no information that indicates that Respondent is unable to pay the proposed penalty. If Respondent believes it lacks the ability to pay the proposed penalty or that the proposed penalty will affect Respondent's ability to continue in business, Respondent should submit a current balance sheet (certified if possible) or other evidence of its assets and liabilities.

TOTAL CIVIL PENALTY PROPOSED

Probable Violation	Maximum Possible Penalty	Baseline Penalty	Increase for Priors	Corrective Action	Proposed Penalty
1	\$32,500	\$7,000	\$ 0	\$ 0	\$7,000
2	\$32,500	\$5,000	\$ 0	\$ 0	\$5,000
3	\$32,500	\$4,500	\$ 0	\$ 0	\$4,500
TOTAL	\$97,500	\$16,500	\$ 0	\$ 0	\$16,500